

*Readopt CHAPTER Env-C 700, effective 11-16-96 (doc. #6374), as interim rules, to read as follows:*

## CHAPTER Env-C 700 RIVERS MANAGEMENT AND PROTECTION PROGRAM

Statutory Authority: RSA 483:11

### PART Env-C 701 DEFINITIONS

Env-C 701.01 "Commissioner" means the commissioner of the department of environmental services.

Env-C 701.02 "Committee" means the rivers management advisory committee established in RSA 483:8.

Env-C 701.03 "Community river resource" means a natural, managed, cultural, or recreational resource or use thereof associated with a river that is recognized by local residents or a municipal document accepted by the municipality, such as a master plan or a water resource management plan, as being important to a community adjacent to a river. "Recognized by local residents" for the purposes of this definition means that there are community projects, activities or events based on the river or its corridor such as river clean-ups, canoe races, or a riverfest.

Env-C 701.04 "Department" means the department of environmental services.

Env-C 701.05 "Endangered or threatened species" means "endangered or threatened species" as defined in RSA 212-A:2, the Endangered Species Conservation Act.

Env-C 701.06 "Endangered or threatened plants" means "endangered or threatened species" as defined in RSA 217-A:3, the NH Native Plant Protection Act.

Env-C 701.07 "Free-flowing" means existing or flowing in a natural condition without artificial impoundment, diversion, channel alterations, or other modifications and without consideration of upstream flow management.

Env-C 701.08 "NH natural heritage inventory" means the program within the department of resources and economic development established by Chapter 195, Laws of 1986.

Env-C 701.09 "Nomination" means the nomination of a river for designation into the program as outlined in Env-C 702.

Env-C 701.10 "Public access" means the right of any person to enter a property on a non-discriminatory basis.

Env-C 701.11 "River" means a flowing body of water or a segment or tributary thereof.

Env-C 701.12 "Rivers coordinator" means the program administrator at the department of environmental services authorized by RSA 483:3.

Env-C 701.13 "River corridor" means the river and the larger of:

- (a) The land area located within a distance of 1320 feet of the normal high water mark; or
- (b) The landward extent of the 100 year floodplain as designated by the Federal Emergency Management Agency.

Env-C 701.14 "Significant aquatic habitat" means regions which are important to the survival of particular aquatic populations. Such regions include, but are not limited to, spawning beds and feeding areas.

Env-C 701.15 "Significant wildlife habitat" means regions which are important to the survival of particular wildlife populations. Such regions include, but are not limited to, deer wintering yards, waterfowl breeding or wintering areas, freshwater wetlands or riparian habitat, and saltwater wetlands associated with estuarine systems.

Env-C 701.16 "Sponsor" means any individual or organization submitting a nomination under this program.

#### PART Env-C 702 NOMINATIONS

Env-C 702.01 Nomination Requirements. Each sponsor shall make a nomination to include a river or segment thereof in the program on a form obtained from the department. At least 2 copies of the nomination shall be submitted to the rivers coordinator on or before June 1 in order for it to be considered in the next legislative session.

Env-C 702.02 Information Required for Nomination. Each sponsor shall supply the following information as part of the nomination:

- (a) The name of the river;
- (b) The location and length of the river or segment;
- (c) The name, address, and daytime telephone number of the sponsor;
- (d) A description of significant resources which the sponsor believes are contained or represented in the river or segment and its corridor;
- (e) A description of the community and public support which the sponsor believes exists for the nomination, including copies of any letters from elected and appointed local officials;
- (f) A recommendation on the appropriate classification or classifications for the river or segment, including the length in miles and start and end point of each segment;
- (g) A map of the river or segment and its corridor taken from a U.S. Geological Survey quadrangle(s) or equivalent in accuracy and detail, and an inset or locator map showing the location of the river or segment within the state; and
- (h) An inventory, description and assessment of the resources of the river or segment and its corridor, including, but not limited to:

- (1) Geologic resources;
- (2) Wildlife resources;
- (3) Vegetation and natural communities;
- (4) Fish resources;
- (5) Water quality as designated pursuant to RSA 485-A:9 or as shown by actual water quality analysis, if available;
- (6) Hydrologic resources, including natural flow characteristics;
- (7) Open space;
- (8) Historical or archaeological resources;
- (9) Existing and potential recreational resources;
- (10) Dams, buildings and other man-made structures;
- (11) Existing and potential withdrawals and discharges;
- (12) Existing and potential hydroelectric resources;
- (13) Community river resources;
- (14) Public access;
- (15) Scenic characteristics;
- (16) Current land use and land use controls;
- (17) Water quantity; and
- (18) Riparian interests, including flowage rights.

Env-C 702.03 Review for Completeness. The rivers coordinator shall review each nomination and determine if the nomination is complete. The rivers coordinator shall notify the sponsor within 30 days of the submission of the nomination of its completeness. In any case where the nomination is determined by the rivers coordinator to be incomplete, the missing information shall be requested of the sponsor and the nomination shall not be deemed complete until such information is provided.

Env-C 702.04 Review Procedures. The rivers coordinator shall forward complete nominations to the committee. After a public hearing as required by RSA 483:6, III and an evaluation of the nomination under both the criteria listed in RSA 483:6, V and Env-C 704, the rivers coordinator shall make a recommendation to the commissioner whether to approve the

nomination. If the rivers coordinator, after considering the criteria, determines that a river nomination is consistent with the policies and intents identified in RSA 483:1 and RSA 483:2, the rivers coordinator shall recommend that the nomination be approved. The recommendation of the rivers coordinator and any recommendation made by the committee, as authorized in RSA 483:8, V, shall be forwarded to the commissioner, together with the nomination, within 120 days of receipt of the complete nomination.

## PART Env-C 703 NOMINATION APPROVAL

Env-C 703.01 Nomination Criteria. The commissioner shall consider the following factors when deciding whether to approve a river nomination:

- (a) The criteria listed in RSA 483:6, V;
- (b) The recommendation prepared by the rivers coordinator;
- (c) The recommendation prepared by the committee;
- (d) The public comments on the nomination received in public hearings held pursuant to RSA 483:6, III and the level of demonstrated community/public support for the nomination as supplied pursuant to Env-C 702.01(e); and
- (e) The points awarded in each resource category under Env-C 704.

### Env-C 703.02 Legislative Review and Approval.

(a) If the commissioner, after considering the factors under Env-C 703.01, determines that a river nomination is consistent with the policies and intents identified in RSA 483:1 and RSA 483:2, the commissioner shall approve the nomination, and shall forward the nomination to the next regular session of the legislature for review and approval according to RSA 483:7.

(b) If the commissioner does not approve a river nomination, the commissioner shall notify the sponsor in writing within 30 days of the receipt of the recommendation of the rivers coordinator and any recommendation of the committee and shall inform the sponsor of the reasons for that decision.

## PART Env-C 704 POINT SYSTEM EVALUATION

### Env-C 704.01 Use of Point System.

(a) All rivers shall be evaluated and the specified point values awarded by the rivers coordinator according to the system described in Env-C 704.02 through Env-C 704.06. Points shall be awarded to recognize the presence of significant resource values present in a river nomination. For all categories, the rivers coordinator shall consult with and consider the advice of the state and federal agencies and other resource experts identified in the following sections before assigning point values.

(b) The points awarded in each resource category identified in Env-C 704.02 through Env-C 704.06 shall be one of the factors considered by the commissioner in determining whether to approve a nomination.

Env-C 704.02 Natural Resource Category. A maximum of 205 points shall be awarded if the river has significant natural resources, according to the following:

(a) For geologic resources, a maximum of 30 points shall be awarded if the river has one or more significant national, regional, state, or local geologic resources as determined by the state geologist or as listed in a national or state resource assessment, according to the following schedule:

- (1) Resource of significance nationally or to the New England region shall receive 30 points;
- (2) Resource of statewide significance shall receive 20 points; and
- (3) Resource of local significance shall receive 10 points.

(b) For wildlife resources, a maximum of 30 points shall be awarded according to the following:

(1) For endangered or threatened animals, a maximum of 15 points shall be awarded if the river supports a species that has been identified as endangered or threatened by the NH fish and game department under RSA 212-A, the U.S. Fish and Wildlife Service under the federal Endangered Species Act of 1973 (87 Stat. 884, as amended) or the NH natural heritage inventory, according to the following schedule:

- a. Endangered or threatened species of national significance shall receive 15 points;
- b. Endangered or threatened species of statewide significance shall receive 10 points;

(2) For significant wildlife habitat, a maximum of 10 points shall be awarded if the river supports or is integral to habitat for game and non-game wildlife populations that is valued, but not necessarily rare, and is determined to be exceptionally diverse, very diverse, or moderately diverse by the NH fish and game department or the US Fish and Wildlife Service. Points shall be awarded according to the following schedule:

- a. Exceptionally diverse or productive or critical natural habitat shall receive 10 points;
- b. Very diverse or productive or critical natural habitat shall receive 5 points; and
- c. Moderately diverse or productive or critical natural habitat shall receive 1 point.

(3) For a wildlife travel corridor, 5 points shall be awarded if the river serves as, or is integral to, an important corridor or part of a corridor for the movement of wildlife between large habitat areas as determined by the NH fish and game department or the US Fish and Wildlife Service.

(c) For vegetation/natural communities, a maximum of 20 points shall be awarded according to the following:

(1) For endangered or threatened plants, a maximum of 15 points shall be awarded if the river supports a plant that has been identified as endangered or threatened by the NH natural heritage inventory or the department of resources and economic development pursuant to RSA 217-A, according to the following schedule:

a. Endangered or threatened plant of national significance as listed by the US Fish and Wildlife Service shall receive 15 points;

b. Endangered or threatened plant of statewide significance as listed by the NH natural heritage inventory or the department of resources and economic development shall receive 10 points; and

(2) For an exemplary natural ecological community, a maximum of 5 points shall be awarded if the river supports, or is integral to, an exemplary natural ecological community as determined by the NH natural heritage inventory.

(d) For fish resources, a maximum of 35 points shall be awarded according to the following:

(1) For endangered or threatened fish, a maximum of 15 points shall be awarded if the river supports a fish that has been identified as endangered or threatened by the NH fish and game department under RSA 212-A or the US Fish and Wildlife Service under the federal Endangered Species Act of 1973 (87 Stat. 884, as amended), according to the following schedule:

a. Endangered or threatened fish of national significance as listed by the US Fish and Wildlife Service shall receive 15 points; and

b. Endangered or threatened fish of statewide significance as listed by the NH fish and game department shall receive 10 points;

(2) For significant aquatic habitat, a maximum of 10 points shall be awarded if the river provides aquatic habitat for fish populations that is valued, but not necessarily rare, and is determined to be exceptionally diverse, very diverse, or moderately diverse by the NH fish and game department or the US Fish and Wildlife Service, according to the following schedule:

a. Exceptionally diverse or productive or critical natural habitat shall receive 10 points;

b. Very diverse or productive or critical natural habitat shall receive 5 points; and

c. Moderately diverse or productive or critical natural habitat shall receive 1 point;

(3) For fish reproduction, a maximum of 5 points shall be awarded if the river supports a fishery that relies on natural reproduction or a stocking program as determined by the NH fish and game department or the US Fish and Wildlife Service according to the following schedule:

a. If the river supports a fish population that relies on natural reproduction it shall receive 5 points;

b. If the river supports a fish population that is partly dependent on a stocking program it shall receive 3 points; and

c. If the river supports a fish population which is wholly dependent upon stocking programs it shall receive 1 point; and

(4) For anadromous fish, a maximum of 5 points shall be awarded if the river is a viable anadromous fish resource as determined by the NH fish and game department or the US Fish and Wildlife Service. Points shall be awarded according to the following schedule:

a. If a restoration effort has begun it shall receive 5 points; and

b. If a documented restoration plan has been developed for the river it shall receive 3 points.

(e) For water quality, a maximum of 30 points shall be awarded according to the following schedule:

(1) If the river has been designated a Class A water or has actual water quality that meets the state water quality standards for Class A waters it shall receive 30 points; and

(2) If the river has been designated a Class B water or has actual water quality that meets the state water quality standards for Class B waters it shall receive 15 points.

(f) For open space, 10 points per occurrence to a maximum of 30 points shall be awarded for each parcel of open space or protected land in the river corridor. Open space and protected land parcels shall include, but not be limited to, national forest lands, state parks and forests, municipal parks, and conservation easements.

(g) For natural flow characteristics, a maximum of 30 points shall be awarded if the river is free-flowing, according to the following schedule:

- (1) If the river is 100 percent free-flowing with no man-made dams, diversions, or other modifications which affect the river's natural flow it shall receive 30 points; and
- (2) If the river is largely free-flowing without characteristics of impoundment excluding low dams, diversion works and other minor modifications it shall receive 15 points.

Env-C 704.03 Managed Resource Category. A maximum of 90 points shall be awarded if the river has significant managed resources, according to the following schedule:

(a) For impoundments, 10 points per occurrence to a maximum of 30 points shall be awarded if the river is managed through the use of dams for public purposes, including but not limited to flood control and low flow augmentation. For the purposes of this paragraph, public purposes shall not include hydroelectric power generation.

(b) For water withdrawals and discharges, a maximum of 30 points shall be awarded according to the following:

(1) For water withdrawals, a maximum of 20 points shall be awarded according to the following schedule:

- a. For a public drinking water supply, 10 points shall be awarded if the river serves as an existing source of public drinking water;
- b. For a public drinking water supply, 5 points shall be awarded if the river serves as a potential source of public drinking water;
- c. For an industrial water supply, 5 points shall be awarded if the river serves as an existing source of industrial water supply;
- d. For an industrial water supply, 3 points shall be awarded if the river serves as a potential source of industrial water supply;
- e. For an agricultural water supply, 5 points shall be awarded if the river serves as an existing source of agricultural water supply as determined by the department.
- f. For an agricultural water supply, 3 points shall be awarded if the river serves as a potential source of agricultural water supply.

(2) For wastewater discharge, a maximum of 10 points shall be awarded if one or more surface wastewater discharges are permitted to the river, according to the following schedule:

- a. For a wastewater treatment facility discharge, a maximum of 10 points shall be awarded if the river is used by a wastewater treatment facility which has been issued a surface water discharge permit by the department; and

b. For an industrial wastewater discharge, a maximum of 5 points shall be awarded if the river is used by an industrial facility which has been issued a surface water discharge permit by the department.

(c) For hydroelectric resources, a maximum of 30 points shall be awarded if the river has one or more existing or potential sites for hydropower production, according to the following:

(1) If the river is being used for hydroelectric power production it shall receive 30 points; and

(2) If the river is identified as having a potential hydroelectric power production site in the NH River Protection and Energy Development Project - Final Report (New England Rivers Center, 1983) it shall receive 15 points.

Env-C 704.04 Cultural Resource Category. A maximum of 60 points shall be awarded if the river has significant cultural resources, according to the following:

(a) For historical or archaeological resources, a maximum of 30 points shall be awarded if the river has one or more significant historical or archaeological resources or significant potential for such sites as determined by the state historic preservation officer or if the resource is listed or is eligible to be listed as a National Historic Landmark or on the National Register of Historic Places or is a recognized Historic District or Multiple Use Area, according to the following schedule:

(1) Resource of national significance shall receive 30 points;

(2) Resource of regional significance shall receive 15 points; and

(3) Resource of statewide significance shall receive 10 points.

(b) For community river resource, 10 points per occurrence to a maximum of 30 points shall be awarded if the river is a significant community resource for one or more of the towns or cities through which it flows. Evidence of a community river resource shall include, but not be limited to, documentation of an on-going river corridor management planning effort or other local efforts to protect or manage the river, the existence of a riverside park or other public area, or community support for riverfront revitalization as demonstrated by acts such as the filing of a petition, establishment of a municipal committee or citizen group, or fundraising activities.

Env-C 704.05 Recreational Resource Category. A maximum of 120 points shall be awarded if the river has significant recreational resources, according to the following:

(a) For a fishery, a maximum of 30 points shall be awarded if the river has a high quality fishery as determined by the NH fish and game department.

(b) For boating, a maximum of 30 points shall be awarded if the river is identified as being of highest significance as a recreational boating river in the NH River Protection and Energy Development Project (New England Rivers Center Study, 1983) or is recognized as a significant recreational boating river in a publication by a national, regional, or statewide recreation

organization or group such as the Appalachian Mountain Club River Guide - New Hampshire/Vermont or the DeLorme New Hampshire Atlas and Gazetteer.

(c) For other recreation, a maximum of 30 points shall be awarded if the river offers one or more opportunities for significant shoreland recreation or swimming. Shoreland recreation shall include, but is not limited to, hiking, camping, picnicking, and birdwatching.

(d) For access, a maximum of 30 points shall be awarded if the river has one or more sites which provide public access to or along the river, according to the following schedule:

- (1) If the public access site is publicly-owned land, 30 points; and
- (2) If the public access site is privately-owned land, 15 points.

Env-C 704.06 Other Resource Category. A maximum of 120 points shall be awarded if the river has significant other resources, according to the following:

(a) For scenery, a maximum of 30 points shall be awarded if the river has one or more scenic sites. Scenic sites shall include, but not be limited to, designated viewing areas, scenic vistas, and overlooks.

(b) For land use, a maximum of 30 points shall be awarded according to the following schedule:

- (1) If the river is characterized by the high quality of natural and scenic resources with river corridors generally undeveloped and development, if any, limited to forest management and scattered housing it shall receive 30 points;
- (2) If the river is adjacent to lands which are partially or predominately used for agriculture, forest management, and dispersed or clustered residential housing it shall receive 20 points;
- (3) If the river flows through a populated area of the state with some residential or other building developments near the shoreline and is readily accessible by road or railroad it shall receive 10 points; and
- (4) If the river flows through a highly populated area of the state and the corridor contains significant developments including, but not limited to, roads, utility crossings, bridges, commercial and industrial developments, solid waste management facilities, and residential developments it shall receive 5 points.

(c) For land use controls, a maximum of 30 points shall be awarded if the municipalities within the river corridor have one or more existing land use controls which affect the river and its corridor. Land use controls shall include, but not be limited to, master plans, water resource management plans, zoning ordinances, overlay districts, subdivision regulations, and easements.

(d) For water quantity, a maximum of 30 points shall be awarded if the river has one or more operating stream gauges maintained by the U.S. Geological Survey, U.S. Army Corps of Engineers, or the department.

**Appendix**

<b>Rule Sections</b>	<b>Statute Implemented</b>
Env-C 701	RSA 483:6
Env-C 702	RSA 483:6
Env-C 703 ( <i>see also specific section below</i> )	RSA 483:6
Env-C 703.02	RSA 483:7
Env-C 704	RSA 483:6